

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27**

**ELEMENTS I25 & HAMPDEN, LLC D/B/A
ELEMENTS MASSAGE**

and

**Cases 27-CA-300907
27-CA-303667**

**UNITED FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION LOCAL 7, AFL-CIO**

**ORDER CONSOLIDATING CASES, COSOLIDATED COMPLAINT
AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (Board) and to avoid unnecessary costs or delay, **IT IS ORDERED THAT** Cases 27-CA-300907 and 27-CA-303667, which are based on charges filed by United Food and Commercial Workers International Union Local 7, AFL-CIO (Union) against Elements I25 & Hampden, LLC d/b/a Elements Massage (Respondent), are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that Respondent has violated the Act as described below.

1.

(a) The charge in Case 27-CA-300907 was filed by the Union on August 5, 2022, and a copy was served on Respondent via U.S. mail on August 8, 2022.

(b) The first amended charge in Case 27-CA-300907 was filed by the Union on August 9, 2022, and a copy was served on Respondent via U.S. mail on August 10, 2022.

(c) The second amended charge in Case 27-CA-300907 was filed by the Union on August 24, 2022, and a copy was served on Respondent via U.S. mail on the same date.

(d) The third amended charge in Case 27-CA-300907 was filed by the Union on September 21, 2022, and a copy was served on Respondent via U.S. mail on September 23, 2022.

(e) The fourth amended charge in Case 27-CA-300907 was filed by the Union on December 5, 2022, and a copy was served via U.S. mail on Respondent on the same date.

(f) The charge in Case 27-CA-303667 was filed by the Union on September 16, 2022, and a copy was serviced on Respondent via U.S. mail on September 20, 2022.

2.

(a) At all material times, Respondent has been a limited liability company, with an office and place of business in Denver, Colorado (Respondent's facility), and has been engaged in the business of providing massage services to customers.

(b) During the calendar year ending December 31, 2022, Respondent, in conducting its business operations described above in paragraph 2(a), derived gross revenues in excess of \$500,000.

(c) During the period of time described above in paragraph 2(b), Respondent, in conducting its operations described above in paragraph 2(a) purchased and received at Respondent's facility, goods and materials valued in excess of \$5,000, which originated from points located outside the State of Colorado.

(d) At all material times Respondent has been an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.

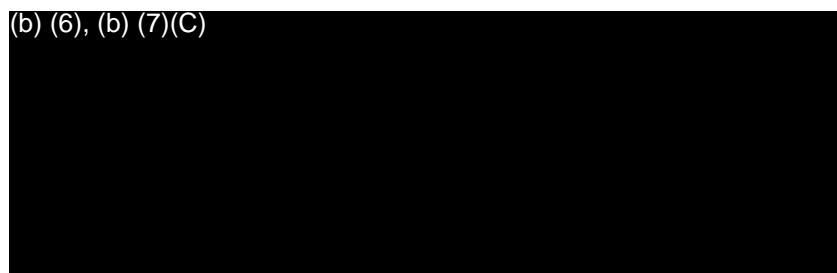
3.

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act. 5.

4.

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act):

(b) (6), (b) (7)(C)



5.

(a) About April 26, 2022, Respondent, at Respondent's facility, by (b) (6), (b) (7)(C) [REDACTED], told employees that they should not discuss wages or wage complaints with one another.

(b) About June 8, 2022, Respondent, at Respondent's facility, by (b) (6), (b) (7)(C) [REDACTED], told employees not to discuss a potential wage and hour claim with each other.

(c) About June 11, 2022, Respondent, at Respondent's facility, by (b) (6), (b) (7)(C) [REDACTED], interrogated employees about their protected concerted activities.

(d) About June 11, 2022, Respondent, at Respondent's facility, by (b) (6), (b) (7)(C) [REDACTED] threatened employees with unspecified reprisals if they were to engage in further protected concerted activity.

(e) About September 10, 2022, Respondent, at Respondent's facility, by (b) (6), (b) (7)(C) [REDACTED] threatened to sell or otherwise dissolve Respondent in retaliation for employees engaging in union activities.

6.

(a) About April or May 2022, Respondent's employees (b) (6), (b) (7)(C) [REDACTED] and (b) (6), (b) (7)(C) [REDACTED] engaged in concerted activities with other employees for the purposes of mutual aid and protection, by discussing employees' potential wage and hour claims with each other and with Respondent.

(b) In or about July 2022, Respondent's employees (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) engaged in concerted activities with other employees for the purpose of mutual aid and protection, by advocating for a coworker with regard to the coworker's potential sexual harassment claim against Respondent.

(c) About (b) (6), (b) (7)(C) 2022, Respondent discharged employee (b) (6), (b) (7)(C)

(d) About (b) (6), (b) (7)(C) 2022, Respondent discharged employee (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(e) Respondent engaged in the conduct described above in paragraphs 6(c) and 6(d), because employees (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) engaged in the conduct described above in paragraphs 6(a) and 6(b), and to discourage employees from engaging in these or other concerted activities.

(f) Respondent engaged in the conduct described above in paragraphs 6(c) and 6(d) because employees (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) joined and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

7.

By the conduct described above in paragraph 5, 6(c), 6(d), and 6(e), Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 in violation of Section 8(a)(1) of the Act.

8.

By the conduct described above in paragraphs 6(c), 6(d), and 6(f), Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employee, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

9.

The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDIES

The General Counsel seeks an Order providing for relief as may be just and proper to remedy the unfair labor practices alleged, including, but not limited to requirements that Respondent:

(1) Physically post the Notice to Employees, and, if sought, provide a Board Agent with immediate access to Respondent's Denver facility, without prior notification, for the purpose of inspecting the Notice.

(2) Electronically distribute the Notice to Employees by text messaging and emailing it to employees who worked in Respondent's Denver facility at any time since April 26, 2022, if Respondent communicates with employees by such means.

(3) Require Respondent's managers and supervisors to attend a Board Agent conducted training about employees' Section 7 rights under the National Labor Relations Act.

(4) Remove from its files all references to the terminations of employees (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) and notify them in writing that this has been done and that the discharges will not be used against them in any way.

(5) Issue letters of apology to employees (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) on Respondent's letterhead and signed by a responsible manager.

The General Counsel further seeks all other relief as may be appropriate to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before [insert date 14 days from issuance, unless that date is a holiday], or postmarked on or before [insert date of the day before the due date]**. Respondent also must serve a copy of the answer on each of the other parties.

The answer must be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. Responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be

accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on Tuesday, September 12, 2022, at 9:00 a.m., at the National Labor Relations Board, Region 27, Hearing Room, Byron Rogers Federal Building, 1961 Stout Street, Suite 13-103, Denver, Colorado 80294, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at

the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: March 6, 2023

Paula S. Sawyer

PAULA S. SAWYER
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 27
Byron Rogers Federal Office Building
1961 Stout Street, Suite 13-103
Denver, CO 80294

Attachments

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27**

ELEMENTS I25 & HAMPDEN, LLC D/B/A	:		
ELEMENTS MASSAGE	:		
	:		
Respondent	:	Case Nos.	27-CA-300907
	:		27-CA-303667
and	:		
	:		
UNITED FOOD AND COMMERCIAL	:		
WORKERS INTERNATIONAL	:		
UNION, AFL-CIO	:		
	:		
Charging Party	:		
	:		

RESPONDENT’S ANSWER TO GENERAL COUNSEL’S COMPLAINT

Now comes the Respondent, Elements I25 & Hampden, LLC d/b/a Elements Massage (“Respondent”) and hereby files its Answer to Counsel for the General Counsel’s Consolidated Complaint (“Complaint”) and asserts as follows:

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The Complaint in whole or in part is barred by the statute of limitations.

THIRD AFFIRMATIVE DEFENSE

Respondent reserves the right to assert additional affirmative defenses which may become known later, or due to a change in the law and/or information elicited during the Hearing.

ANSWER

In response to the numbered paragraphs set forth in the Complaint, Respondents hereby answer as follows:

1. Respondent admits the allegations listed in paragraph 1(a), (c), (d), (e), and (f) of the Complaint. Respondent is without sufficient knowledge as to the allegations set forth in paragraph 1(b) of the Complaint. To the extent an answer is required, the allegations set forth in 1(b) of the Complaint are denied.
2. Respondent admits the allegations listed in paragraph 2(a), (b), (c), and (d) of the Complaint.
3. Respondent admits the allegations listed in paragraph 3 of the Complaint.
4. Respondent admits that allegations listed in paragraph 4 of the Complaint.
5. Respondent denies the allegations listed in paragraph 5(a), (b), (c), (d), and (e) of the Complaint.
6. Respondent denies the allegations listed in paragraph 6(a), (b), (e), and (f) of the Complaint. Respondent admits the allegations listed in paragraph 6(c) and (d) of the Complaint.
7. Respondent denies the allegations listed in paragraph 7 of the Complaint.
8. Respondent denies the allegations listed in paragraph 8 of the Complaint.
9. Respondent denies the allegations set forth in paragraph 9 of the Complaint.
10. Respondent denies the allegations set forth in paragraph 10 of the Complaint.

REMEDIES

Counsel for the General Counsel's proposed remedies listed in paragraph three (3) and five (5) are unnecessary punitive overreach and should not be granted because they are not supported by current Board precedent.

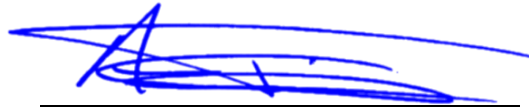
WHEREFORE, Respondent, having fully answered the Complaint, prays for the following relief:

- (1) the Complaint be dismissed with prejudice;

(2) the Board grant Respondents such other relief, legal or equitable, as the Board may deem just and proper.

Dated at Columbus Ohio this 16th day of March 2023.

Respectfully submitted,



Aaron T. Tulencik
Tulencik Law Firm, LLC
7720 Rivers Edge Dr., Suite 126
Columbus, Ohio 43235
p: 614.704.5870
f: 614.396.8836

Counsel for Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 16, 2023, an electronic original of Respondents' Answer to General Counsel's Consolidates Complaint was transmitted the National Labor Relations Board, Region 27, via the Department Of Labor, National Labor Relations Board electronic filing system and, further, that copies of the foregoing Answer were transmitted to the following individuals by electronic mail:

Mathew Schechter
General Counsel
United Food and Commercial Workers, Local 7
7760 West 38th Avenue
Suite 400
Wheat Ridge, CO 80033
mschechter@ufcw7.com

Counsel for Charging Party



Aaron T. Tulencik

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27**

**ELEMENTS I25 & HAMPDEN, LLC D/B/A
ELEMENTS MASSAGE**

and

**Cases 27-CA-300907
27-CA-303667**

**UNITED FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION LOCAL 7, AFL-CIO**

**AMENDMENT TO ORDER CONSOLIDATING CASES, CONSOLIDATED
COMPLAINT AND NOTICE OF HEARING**

On March 6, 2023, the undersigned issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing inadvertently scheduling the hearing in this matter for “Tuesday, September 12, 2022”. The Consolidated Complaint and Notice of Hearing is hereby corrected to replace the hearing date from “September 12, 2022” to “September 12, 2023” so that the Notice of Hearing paragraph, as corrected, reads as follows:

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **Tuesday, September 12, 2023**, at 9:00 a.m., (Mountain Time) at the National Labor Relations Board, Region 27, Hearing Room, Byron Rogers Federal Building, 1961 Stout Street, Suite 13-103, Denver, Colorado

80294, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated this 20th day of April 2023.

Paula S. Sawyer

PAULA S. SAWYER
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 27
Byron Rogers Federal Office Building
1961 Stout Street, Suite 13-103
Denver, CO 80294

Attachments

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlrb.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlrb.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing.

If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

**Cases 27-CA-300907
27-CA-303667**

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in ***detail***;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

(b) (6), (b) (7)(C)

Elements I25 & Hampden, LLC d/b/a
Elements Massage
6365 E. Hampden Ave. #103
Denver, CO 80222

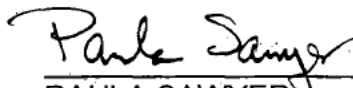
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Columbus, OH 43235

Samantha Palladino, Associate General Counsel
Kristina Bush, Associate General Counsel
Mathew Shechter, General Counsel
United Food and Commercial Workers
International Union Local 7, AFL-CIO
7760 West 38th Ave Ste 400
Wheat Ridge, CO 80033

IMPORTANT NOTICE

The date which has been set for hearing in this matter should be checked immediately. If there is proper cause for not proceeding with the hearing on that date, a motion to change the date of the hearing should be made within ten (10) days from the service of the Complaint. Thereafter, it will be assumed that the scheduled hearing date has been agreed upon and that all parties will be prepared to proceed to the hearing on that date. Later motions to reschedule the hearing generally will not be granted in the absence of a proper showing of unanticipated and uncontrollable intervening circumstances.

All parties are encouraged to fully explore the possibilities of settlement. Early settlement agreements prior to extensive and costly trial preparation may result in substantial savings of time, money and personnel resources for all parties. The Board Agent assigned to this case will be happy to discuss settlement at any mutually convenient time.



PAULA SAWYER
REGIONAL DIRECTOR
REGION 27

FURTHER NOTICE REGARDING SETTLEMENT JUDGES

It is the policy of the Board and the office of the General Counsel to provide full opportunity to the parties to reach a mutually satisfactory resolution of issues as an alternative to litigation. Settlement of a meritorious case is the most effective means to improve relationships between the parties and to permit the Board to concentrate its decisional activities in other cases, thereby expediting all case action. (CHM 10124.1)

The attention of all parties is directed to Section 102.35 of the Board's Rules and Regulations regarding the assignment of settlement judges:

Section 102.35

(b) Upon the request of any party or the judge assigned to hear a case, or on his or her own motion, the chief administrative law judge in Washington, D.C., the deputy chief judge in San Francisco, the associate chief judge in Atlanta, or the associate chief judge in New York may assign a judge who shall be other than the trial judge to conduct settlement negotiations. In exercising his or her discretion, the chief, deputy chief, or associate chief judge making the assignment will consider, among other factors, whether there is reason to believe that resolution of the dispute is likely, the request for assignment of a settlement judge is made in good faith, and the assignment is otherwise feasible. Provided, however, that no such assignment shall be made absent the agreement of all parties to the use of this procedure.

(1) The settlement judge shall convene and preside over conferences and settlement negotiations between the parties, assess the practicalities of a potential settlement, and report to the chief, deputy, or associate the status of settlement negotiations, recommending continuation or termination of the settlement negotiations. Where feasible settlement conferences shall be held in person.

(2) The settlement judge may require that the attorney or other representative for each party be present at settlement conferences and that the parties or agents with full settlement authority also be present or available by telephone.

(3) Participation of the settlement judge shall terminate upon the order of the chief, deputy, or associates issued after consultation with the settlement judge. The conduct of settlement negotiations shall not unduly delay the hearing.

(4) All discussions between the parties and the settlement judge shall be confidential. The settlement judge shall not discuss any aspect of the case with the trial judge, and no evidence regarding statements, conduct, offers of settlement, and concessions of the parties made in proceedings before the settlement judge shall be admissible in any proceeding before the Board, except by stipulation of the parties. Documents disclosed in the settlement process may not be used in litigation unless voluntarily produced or obtained pursuant to subpoena.

(5) No decision of a chief, deputy, or associate concerning the assignment of a settlement judge or the termination of a settlement judge's assignment shall be appealable to the Board.

(6) Any settlement reached under the auspices of a settlement judge shall be subject to approval in accordance with the provisions of Section 101.9 of the Board's Statements of Procedures.